

TITLE 86, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 5

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT

Rules and Regulations Concerning the
Administration of the Nebraska Affordable Housing Act

Adopted by the Nebraska Department of Economic Development: April 28, 2005

NEBRASKA ADMINISTRATIVE CODE

TITLE 86 NAC5

ALPHABETICAL TABLE OF CONTENTS

<u>Subject or Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Administration	Neb. Rev. Stat. § 58-703; § 58-704; § 58-705	Section 001
Directly Provide Trust Funds to the Nebraska Department of Health and Human Services	Neb. Rev. Stat. § 58-708	Section 003
Eligible Activities	Neb. Rev. Stat. § 58-706; § 58-707; § 58-708	Section 002
Qualified Allocation Plan	Neb. Rev. Stat. § 58-706; § 58-707; § 58-708	Section 004

NEBRASKA ADMINISTRATIVE CODE

TITLE 86 NAC5

NUMERICAL TABLE OF CONTENTS

<u>Subject or Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Administration	Neb. Rev. Stat. § 58-703; § 58-704; § 58-705	Section 001
Eligible Activities	Neb. Rev. Stat. § 58-706; § 58-707; § 58-708	Section 002
Directly Provide Trust Funds to the Nebraska Department of Health and Human Services	Neb. Rev. Stat. § 58-708	Section 003
Qualified Allocation Plan	Neb. Rev. Stat. § 58-706; § 58-707; § 58-708	Section 004

NEBRASKA ADMINISTRATIVE CODE

TITLE 86—DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 5 - Rules and Regulations Concerning the Administration of the Nebraska Affordable Housing Act

001. Administration.

These rules and regulations relate to administration of the Nebraska Affordable Housing Act. Pursuant to provisions of Nebraska Revised Statutes, Sections 58-701 to 58-711, the following rules and regulations shall govern the procedures for administration of the Nebraska Affordable Housing Act (the “Act”).

001.01 Definitions

001.01A Adults with Serious Mental Illness—means persons

- (1) age 18 and over, and
- (2) Who currently have, or at any time during the past year had, a diagnosable mental behavioral or emotional disorder of sufficient duration to meet diagnostic criteria specified within the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (“DSM-IV”) or their ICD-9-CM equivalent (and subsequent revisions), incorporated herein by this reference and available for access by interested parties upon request at the offices of the Nebraska Department of Economic Development, 4th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509, with the exception of DSM-IV “V” codes, substance use disorders, and development disorders, which are excluded, unless they co-occur with another diagnosable serious mental illness, and
- (3) where such disorder has resulted in functional impairment, which substantially interferes with or limits one or more major life functions.

The source document for this definition is the Community Mental Health Services Block Grant Application Guidance and Instructions FY 2005 – 2007, a publication of the U.S. Department of Health and Human Services.

001.01B Department—means the Department of Economic Development.

001.01C Disability—means: actually having; or having a record or history of having had; or being regarded by a public entity as having—a physical or mental impairment that substantially limits one or more major life activity.

001.01D Eligible Activities—means the activities as set forth in Section 002 of these Rules.

001.01E Eligible Forms of Assistance—means loans, grants, subsidies, credit enhancements, and other financial assistance for community affordable housing projects, which are associated with projects or programs located in Nebraska. Eligible Forms of Assistance also means rental assistance for adults with serious mental illness, which rental assistance must be for rental property located in Nebraska.

001.01F Governmental Subdivision—means a county, municipality or village.

001.01G Infrastructure—means on-site improvements, building new off-site utility connections to an adjacent street, or street construction.

001.01H Low-Income Household—means income for a household which is at or below the following percentages of the area median income per the most recent United States Department of Housing and Urban Development (HUD) income limits: (a) 100% in instances of homeownership activities under the Act; and, (b) 80% in instances of rental housing activities under the Act. The HUD income limits are incorporated herein by this reference and available for access by interested parties upon request at the offices of the Nebraska Department of Economic Development, 4th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. For the information of the reader, the HUD income limits are also available for viewing on HUD's national website. The specific webpage address (current as of the time of adoption of these Rules, but obviously subject to future change by HUD) is <http://huduser.org/datasets/il.html>.

001.01I Program Income—means the income as set forth in Section 001.03 of these Rules.

001.01J Qualified Allocation Plan—means the plan as set forth in Section 004 of these Rules.

001.01K Qualified Recipient—means: (a) a Nebraska governmental subdivision; (b) a local housing authority, which means a 'housing agency' as that term is defined in the Nebraska Housing Agency Act, §§71-1572 to 71-15,168, Nebraska Revised Statutes (Reissue 2003); (c) a community action agency for a Nebraska community; (d) a community-based nonprofit organization for a Nebraska community; (e) a neighborhood-based nonprofit organization for a Nebraska neighborhood; or, (f) a reservation-based nonprofit organization for a reservation located in Nebraska; and, (g) Qualified Recipient also includes a for-profit entity working in conjunction with one of the organizations listed in Section 001.01K (a)-(f); and further, (h) within the context of directly providing Trust Funds to the Nebraska Department of Health and Human Services pursuant to Section 003 of these Rules, Qualified Recipient includes a Regional Behavioral Health Authority established pursuant to §71-808, Nebraska Revised Statutes (2004 Supplement). Only an organization, not an individual, may be a Qualified Recipient, and no individual may receive a direct loan from the Affordable Housing Trust Fund.

001.01L Trust Fund—means the Affordable Housing Trust Fund created pursuant to the Act, and money therein will be referred to as Trust Funds.

001.01M Very Low-Income Household—means income for a household which is at or below the following percentages of the area median income per the most recent United States Department of Housing and Urban Development (HUD) income limits: (a) 50% in instances of homeownership activities under the Act; and, (b) 50% in instances of rental housing activities under the Act. The HUD income limits are incorporated herein by this reference and available for access by interested parties upon request at the offices of the Nebraska Department of Economic Development, 4th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. For the information of the reader, the HUD income limits are also available for viewing on HUD’s national website. The specific webpage address (current as of the time of adoption of these Rules, but obviously subject to future change by HUD) is <http://huduser.org/datasets/il.html>.

001.02 Application and Award Process

Only Qualified Recipients may apply to the Department for funding of awards.

001.02A Application Form/Guidelines/Fund Availability. Such application and instructions for completing the same, together with any guidelines, shall be provided by the Department. All applications for awards shall be made on forms provided by the Department. The Department shall publish notices of fund availability.

001.02B Project Selection Criteria. The Department will establish application criteria in accordance with the Qualified Allocation Plan and review and approve applications according to said criteria and other factors cited in application guidelines.

001.02C Notice of Approval. Qualified Recipients shall receive a written Notice of Approval and the Department and the Qualified Recipients shall execute an award agreement. A Qualified Recipient’s failure to execute the award agreement will result in the Notice of Approval being withdrawn.

001.03 Program Income

Program income includes, but is not limited to: a) payments of principal and interest on loans made using Trust Funds; b) proceeds from the disposition by sale or long-term lease of real property purchased or improved with Trust Funds; c) proceeds from the disposition of equipment purchased with Trust Funds; d) interest earned on program income pending its disposition; and e) interest earned on Trust Funds held in a revolving loan fund’s cash balance interest bearing account. The Department may require that program income received prior to the completion of the approved eligible activities must be applied to those activities prior to requesting additional Trust Funds from the Department.

The Department may allow Qualified Recipients to retain program income for a period of time. Qualified Recipients must reuse funds in the manner approved by the Department.

001.04 Required Match

A Qualified Recipient qualified under the criteria in Section 001.01K (g) [a for-profit entity] working in conjunction with a Qualified Recipient qualified under the criteria in Section 001.01K (a) – (f) [for the most part, local governments, non-profits and public housing authorities] shall be required to provide, or cause to be provided, matching funds for the eligible activities, which shall be at least equal to 10% of the amount of the award.

The Department may require matching funds on a project-by-project basis at a level that both ensures a financially sound project and maximizes the leveraging of the Trust Funds.

001.05 Payment of Award Funds

Payment of award funds by the Department to Qualified Recipients shall be made on a basis deemed reasonable by the Department to appropriately provide financial support after costs or liabilities have been incurred. The Department may however, provide payment of award funds before costs or liabilities are incurred for rental assistance for adults with serious mental illness.

The Department may require adequate documentation regarding said costs or liabilities before paying award funds.

001.06 Performance Review

The Department shall monitor programs and projects to evaluate the Qualified Recipient's compliance with the award agreement and other requirements as promulgated in other administrative guidance. The Department or other qualified agencies or individuals may carry out monitoring duties.

001.07 Noncompliance

The Department may revoke awards, seek repayment of awards, or both, if:

001.07A the terms of the award agreement have not been, nor are anticipated to be, fulfilled;

001.07B the Department finds that the application contained inaccuracies, omissions, errors or misrepresentations;

001.07C the time schedule for program completion was misrepresented or has not been maintained;

001.07D any property, real or personal, acquired or developed with award funds, passes or diverts from control of the Qualified Recipient or is used for purposes (lawful or unlawful) other than the approved program purpose, unless prior written approval from the Department has been obtained;

001.07E there exists a serious, material and uncorrected violation of any health, safety, welfare, or zoning code associated with the project funded with Trust Funds.

001.08 Ineligibility

Whenever the Department determines at any time that a Qualified Recipient is in violation of the Rules, the Qualified Recipient may be deemed ineligible for further assistance for subsequent projects until the violative matter has been resolved to the satisfaction of the Department.

001.09 Funds Required to be Returned

Any funds required to be returned by the Qualified Recipient to the Department shall be deposited in the Trust Fund and reallocated by the Department for purposes under the Act.

001.10 Other Programmatic Requirements

The Department shall determine project specific requirements including, but not limited to, income restrictions, income determination methods, rent restrictions, environmental review procedures, recapture and resale provisions, conflict of interest policies, anti-discrimination policies, and other contractual requirements.

002. Eligible Activities.

Subject to the additional provisions of these Rules, the following are eligible activities for assistance from the Trust Fund:

002.00A New construction, rehabilitation or acquisition of housing to assist low-income and very low-income families;

002.00B Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;

002.00C Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;

002.00D Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;

002.00E Mortgage insurance guarantees for eligible projects;

002.00F Acquisition of housing units for the purpose of preservation of housing to assist low-income and very low-income families;

002.00G Projects making affordable housing more accessible to families with elderly members or members who have disabilities;

002.00H Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;

002.00I Infrastructure projects necessary for the development of affordable housing;

002.00J Downpayment and closing cost assistance;

002.00K Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward: a) preparing potential home buyers to purchase affordable housing and post purchase education; b) target audiences eligible to utilize the services of housing assistance groups or organizations; and c) developers interested in the rehabilitation, acquisition, or construction of affordable housing;

002.00L Rental assistance for adults with serious mental illness. Such assistance funded by Trust Funds shall not exceed two million dollars annually.

003. Directly Provide Trust Funds to the Nebraska Department of Health and Human Services

Under the Act [see §58-708(2)], the Department is permitted, in carrying out its administration of the Trust Fund, to directly provide Trust Funds to other governmental entities. The Department may provide Trust Funds directly to the Nebraska Department of Health and Human Services ("HHS"), for purposes of carrying out the eligible activity of "rental assistance for adults with serious mental illness" (quoting the Act), if the Department determines that to be the most efficient and effective means of delivering this portion of program services. If the Department so provides Trust Funds directly to HHS under this Section 003, then only the following select provisions of these Rules (and no other provisions in these Rules) will be applicable to HHS' administration of Trust Funds and to HHS' carrying out of the eligible activity of rental assistance for adults with serious mental illness—and those certain select provisions of these Rules which are applicable to HHS are: Section 001.01 *Definitions*; Section 002.00L (which specifies rental assistance for adults with serious mental illness as an eligible activity); Section 003; and Section 004.02 *Program Requirements for Rental Assistance for Adults with Serious Mental Illness*.

Any such direct provision of Trust Funds to HHS will also necessitate the Department delegating to HHS the authority to administer such portion of the Trust Funds as HHS may receive from the Department. Such delegated administrative authority will include the process of accepting applications for Trust Funds; considering and deciding upon awards of Trust Funds based upon such applications; and awarding Trust Funds for the eligible activity of rental assistance for adults with serious mental illness.

The direct provision of Trust Funds to HHS from the Department, along with the delegation of necessary authority to administer such portion of the Trust Funds, will be memorialized via an interagency agreement between HHS and the Department, which agreement must be agreed to by both agencies and duly executed by both agencies prior to any direct provision of Trust Funds to HHS from the Department.

004. Qualified Allocation Plan

The Department shall adopt a Qualified Allocation Plan as required by the Act. The plan shall

- a) set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and
- b) give first priority in allocating trust fund assistance among selected projects to those projects which serve the lowest income occupant and are obligated to serve qualified occupants for the longest period of time.

004.01 Housing Assistance Policies

The Department may establish policies, some of which may be more restrictive than these rules and regulations, for the use of Trust Funds for rental housing, rental assistance (except as provided in Section 003 of these Rules), homebuyers' assistance, and homeowners' assistance including, but not limited to, policies with respect to the terms of assistance, beneficiaries, eligible costs, property types, and affordability restrictions.

004.02 Program Requirements for Rental Assistance for Adults with Serious Mental Illness

004.02A Eligible forms of assistance for this eligible activity are: rent; rent deposits; utility deposits; security deposits; and related administrative costs.

004.02B To receive assistance with Trust Funds in the form of rental assistance for adults with serious mental illness (the eligible activity cited in the Act and in Section 002.00L of these Rules), such a person must also meet all of the following conditions:

004.02B(1) He/She must be an adult with serious mental illness as defined in Section 001.01A of these Rules;

004.02B(2) He/She must have an Individual Service Plan that provides appropriate community-based services to enable the person to live in the community. The Individual Service Plan must include a contact person that is properly trained in identifying and assisting the individual with obtaining and maintaining adequate housing in the community;

004.02B(3) He/She must have been discharged from an inpatient mental health commitment, eligible to move from a residential level of care to independent living to make room for a person being discharged from an inpatient mental health commitment, or at risk of an inpatient mental health commitment, at least in part because of lack of affordable independent housing. This eligibility determination must be made by the Department of Health and Human Services;

004.02B(4) He/She must have successfully completed the application process established by the appropriate Qualified Recipient or the Department of Health and Human Services for such rental assistance, which this application process shall include verification that the tenant qualifies as a Very Low-Income Household as defined in Section 001.01M of these Rules.

004.02B(5) After issuance of a rental assistance voucher, he/she must obtain within 90 days housing that

- (a) meets the U.S. Department of Housing and Urban Development Housing Quality Standards under 24 C.F.R. Section 982.401, a copy of which is available at the Nebraska Department of Economic Development, 301 Centennial Mall South, Lincoln, NE 68509;
- (b) has a leased rent (not including utilities) equal to or less than the Fair Market Rent limit determined and published by the U.S. Department of Housing and Urban Development under 24 C.F.R. Section 888.111 to 888.115, with such Fair Market Rents published annually in the Federal Register, a copy of such Federal regulations and of such Fair Market Rents as published being available at the Nebraska Department of Economic Development, 301 Centennial Mall South, Lincoln, NE 68509. In the event that the program is administered by HHS as defined in Section 003 of these Rules, HHS may waive the rent limit in the event that the Fair Market Rent limit previously mentioned is not adequate to obtain housing; and,

004.02B(6) He/She must have submitted an application for, and must have fully exhausted attempts to receive, local program rental assistance where his or her housing is located. If there is a waiting list associated with the local program for rental assistance, the individual must be on the waiting list or have a written determination of ineligibility for the local program's rental assistance program.